UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
LIMITED

TD/B/RBP/L.61
20 October 1993

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts
on Restrictive Business Practices
Twelfth session
Geneva, 18 October 1993

DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES ON ITS TWELFTH SESSION

Rapporteur: Mr. A. Brahime (Morocco)

AGENDA ITEMS 3, 4 AND 5

Speaking: Secretariat, Norway, China, Algeria, Egypt, Russian Federation, Canada, Switzerland, Portugal, Germany, Peru, USA, India

Note for Delegations

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments - to be submitted in English or French - should be communicated by Friday, 26 October 1993 at the latest to:

The UNCTAD Editorial Section
Room E.8106
Fax No. 907 0056
Tel. No. 907 5657 or 5655

GE.93- 54053

INTRODUCTION

1. The Intergovernmental Group of Experts on Restrictive Business Practices held its twelfth session at the Palais des Nations, Geneva, from 18 to 22 October 1993.

2. In the course of the session, the Group held ... plenary meetings and ... informal meetings.

Opening statements

3. The **Deputy to the Secretary-General of UNCTAD** said that the session was taking place at a time when many countries were adopting market-oriented economic reforms and reforming their competition laws, as evidenced by the number of representatives of newly established competition authorities present. UNCTAD's technical assistance was contributing to this trend. There were now proposals to integrate competition principles into international trade rules. One such proposal was the "Draft International Antitrust Code: A GATT-MTO Plurilateral Trade Agreement", which would be the subject of consultations by the Group of Experts at the current session. The consultations procedure of the Group lent itself to discussions on such issues. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices was a key input for strengthening international cooperation on competition and for bringing about greater convergence and compatibility of basic competition principles accepted by the international community and the international trading system. The goals set by the Cartagena Commitment - namely, to encourage competition, to promote the proper functioning of markets and efficient resource allocation, and to bring about further liberalization of international trade - were relevant to both the Intergovernmental Group of Experts and for the forthcoming third session of the United Nations Conference to Review All Aspects of the Set of Principles and Rules on Restrictive Business Practices (the Review Conference), to be held in 1995.

4. The **Director of the International Trade Division** drew attention to the main items on the agenda of the twelfth session, in particular the review of the operation of, and experience arising from, the Set of Principles and Rules, including the steps taken by States at the national or regional levels to meet their commitment to the Set. In this respect, great importance was attached to efforts by all countries, including developing countries and countries in transition, to adopt and enforce effectively competition legislation, as a

concrete step towards creating a level playing field for competition at the international level.

5. He noted that the Intergovernmental Group of Experts had before it two studies prepared by the UNCTAD secretariat: one on "Concentration of market power through mergers, takeovers, joint ventures and other acquisitions of control and its effects on international markets in particular the markets of developing countries" (TD/B/RBP/80/Rev.2), which had been finalized taking into account the comments of member States on an earlier version of the study; and a new study on the role of competition policy in economic reforms in developing and other countries (TD/B/RBP/96), which had been prepared on the basis of an annotated outline approved by the Intergovernmental Group of Experts at its eleventh session. This study was especially relevant, as it was set in the context of the fundamental economic reforms taking place around the world motivated by a growing recognition of the role of market forces, and hence of competition, in the efficient functioning of economies at all stages of development. In drawing attention to the conclusions of the study, he mentioned that appropriate coordination had been assured with the Ad Hoc Working Group on Privatization; moreover, the study would be available to the latter's forthcoming third session. Reciprocally, the present twelfth session on Restrictive Business Practices had before it two documents for submission to the third session of the Ad Hoc Working Group on Privatization, namely: "In-depth considerations of competition and the regulation of privatized monopolies" (TD/B/WG.3/11) and "Design, implementation and results of privatization programmes: A cross-country analysis of national experiences" (TD/B/WG.3/7/Rev.1).

6. As requested by the Intergovernmental Expert Group at its eleventh session, the secretariat had revised the checklist for the exchange of information and consultations, taking into account the comments of member States and had issued an updated directory of competition authorities (TD/B/RBP/78/Rev.2). Under the same agenda item, as had become customary at annual sessions, multilateral consultations were scheduled to take place on appropriate remedies for abuses of market power and on criteria for assessing fines for violations of competition laws, along with a presentation of a proposed "Draft International Anti-trust Code", suggested to become a "GATT-MTO Plurilateral Trade Agreement".

7. The secretariat had also prepared a revised draft of possible elements for articles of a model law or laws on Restrictive Business Practices (TD/B/RBP/81/Rev.2) as well as a new compilation of the Handbook on Restrictive Business Practices Legislation (TD/B/RBP/94), containing the new laws of Italy,

Jamaica and Venezuela. States members were invited to enrich the commentary on the model law or laws.

8. With respect to technical assistance in the area of competition policy, the secretariat had prepared a document describing UNCTAD activities in this area since the eleventh session of the Intergovernmental Group of Experts and setting out the views of Governments on technical assistance (TD/B/RBP/97).

9. The spokesman for **Group B** (Norway) regretted that all documents prepared for the Intergovernmental Group of Experts had not been made available in time and in all languages.

10. The representative of **China** commended the efforts made by the international community to strengthen the control of restrictive business practices, as well as the secretariat's contribution in this area, but stressed that much more was required in order to achieve the goals of the Set of Principles and Rules on Restrictive Business Practices for supporting development and eliminating barriers to trade. Developing countries, including China, had liberalized and reformed their economic policies, but needed to address competition issues in the areas of foreign investment and trade, including the restrictive trade practices of foreign firms as well as anti-dumping and countervailing measures. Such issues would need to be resolved by strengthening international cooperation, including through the work of the Intergovernmental Group of Experts.

11. The spokeswoman for the **Group of 77** (Algeria) stated that the Group of 77 was ready to contribute positively towards ensuring concrete results and a successful conclusion to the present twelfth session.

Chapter I

REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(Agenda item 3)

ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET:

(a) **STUDIES ON RESTRICTIVE BUSINESS PRACTICES RELATED TO THE PROVISIONS OF THE SET OF PRINCIPLES AND RULES;**

(b) **INFORMATION AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES;**

(c) **THE MODEL LAW OR LAWS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, AND THE HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION;**

(d) **TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES**

(Agenda item 4)

WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES

(Agenda item 5)

12. The representative of **Egypt** referred to his country's attachment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices; this had already been affirmed in previous sessions of the Intergovernmental Group of Experts. Structural adjustments and other economic reform measures undertaken by Egypt had proved successful, as had been recognized by the institutions and agencies concerned. The role of the private sector in export and import trade had been augmented.

13. Egypt had decided to implement comprehensive legislation to regulate restrictive business practices so that competition could play its part in the

economy. The production sector, freed from government supervision, had become subject to the full play of market forces. The recent ministerial reorganization had brought trade under one ministry. Trade liberalization and elimination of monopolies were being vigorously pursued. Moreover, the private sector was expanding; there was no clash between private and public sectors. Reform of Customs regulations was aimed at eliminating discrimination and enhancing the advantages of competition policy. Great progress had been made in this direction; today less than 10 per cent of products were subject to restrictions as compared to 35 per cent in 1984. Egypt was doing everything possible to pursue a free competition policy. To this end, it was very important to consolidate progress achieved within a framework of anti-restrictive business practices rules. He then called upon the Intergovernmental Group of Experts to extend its discussion to incorporate trade in services, in cooperation with the Standing Committee on Developing Services Sectors, given the importance of this subject to many countries.

14. The representative of the **Russian Federation** described the provisions of the law on competition and limitation of monopolies of 1991 and its implementation by the State Committee on Prevention of Monopolies, in the context of establishing a legislative basis for the transition to a market-oriented economy. The law was particularly intended to forestall agreements among dominant entities where these could result in a significant limitation of competition. Some 88 bodies with specific territorial competence had assisted in its preparation and review. It would consequently be amended to bring it in line with changing conditions, taking into account both local and international experience. Cooperation on competition matters was being undertaken with the countries of the Commonwealth of Independent States and with France, Germany, Japan, the United Kingdom and the United States of America.

15. The representative of **Canada** called attention to the principles and application of the Canadian Competition Act, which was aimed at achieving economic efficiency and competitive prices and goods, rather than addressing competition as an end in itself. Guidelines on different areas of competition law had been developed; many countries had found them to be useful references. The proper application of competition policy was a key element of framework laws facilitating economic activity. As more goods and services were traded internationally, policies had to be adjusted. Competition policy must ensure that private restrictive business practices did not replace national trade barriers but domestic policies should not unduly restrict competition. Globalization was shifting the focus of international anti-trust relations away from containment of frictions arising from extraterritorial application of anti-

trust laws towards greater international cooperation on competition policy application. Competition policy concepts and action were converging. The North American Free Trade Agreement (NAFTA) included a chapter on competition. In the draft Uruguay Round texts, competition policy perspectives had been featured. Competition policy had been successfully applied as a market integration instrument by the European Community. Canada anticipated successful, timely conclusion of both the Uruguay Round and NAFTA. Canada had been the host to competition officers from Mexico and Russia, in fulfilment of the objectives of the UNCTAD Set and had participated along with Norway and Sweden in the UNCTAD seminar for CARICOM countries. In addition, it had also engaged in productive bilateral exchanges. There was a growing convergence of views regarding the need for serious application of competition policy. With reference to the late distribution of documents, he said that this would regrettably detract from the Group's discussions; ways and means should be examined to ensure that this situation did not recur.

16. The representative of **Switzerland** said that his country had undertaken a revision of its Competition Act of 1985, with a view to elaborating a draft law that would be broader in scope and contain criteria by which to control and prevent abusive trade practices. The draft law would define rules of conduct in greater detail, provide new legal arrangements covering rules of procedure, and establish new institutional structures, including a federal competition office responsible for enquiries, and an administratively independent Competition Council mandated to take decisions. The latter would have a broad field of competence, including the right to advise the Confederation and the Cantons on draft legislation affecting competition.

17. The representative of **Portugal** stated that the new Portuguese law expected to come into force on 1 January 1994 had already been approved by the Council of Ministers. It would respond to the deep changes that had occurred in the structure and functioning of the Portuguese economy as a result of liberalization, deregulation and privatization of important areas of the economic activity in line with European integration. The law was applicable to all economic activities exercised in the private, public and cooperative sectors. Like Community law and the national legislation of other countries, the new Portuguese law would apply to anti-competitive practices and abuses of a dominant position and would regulate for control of concentration.

18. In the area of technical assistance, Portugal had been promoting bilateral cooperation projects, mainly with Portuguese-speaking African countries. Besides the continuation of the ongoing programme with Angola, initiatives had also been

launched in the areas of competition and restrictive business practices with Cape Verde and Mozambique.

19. The representative of **Germany** commended the initiative of the Chairman to devote as much time as possible to substantive discussions within informal meetings. Countries which had delegated experts from their capitals were especially gratified by this procedure. The search for appropriate remedies to the abuse of market power would benefit from this informal approach. Noting that several documents had not been available in due time, he said that his delegation regretted that it would not be in a position to discuss some of the issues in depth at the present stage.

20. The representative of **Peru** gave information on the recent legislative developments in competition rules in his country as well as the legal framework for their enforcement. In this context, he highlighted the adoption of Legislative Decree 701 against Monopolistic, Controlling and Restrictive Practices Affecting Free Competition, and the establishment, in November 1992, of the National Institute for the Safeguard of Competition and the Protection of Intellectual Property (INDECOPI). He highlighted the latter's tasks and responsibilities, describing its organization and competences. Peruvian law in this domain was fully in line with the recommendations contained in the Set of Principles and Rules for the Control of Restrictive Business Practices. In closing, he said that it was anticipated that the exchange of experiences on this subject during the informal discussions would be fruitful.

21. The representative of the **United States of America** expressed regret concerning the non-availability of certain documents prior to the session, and reiterated the distress voiced by the representative of Germany on this point. He declared support for the timetable for work outlined by the Chairman and the proposal to hold informal discussions on substantive matters at the level of the contact group.

22. The representative of **India** stated that the enactment of the Monopolies and Restrictive Trade Practices Act (MRTP), in 1969, had provided the legal framework for control of restrictive business practices in his country. An independent MRTP Commission had been set up to enforce the provisions of this Act during the past 24 years. The Commission had handled several cases and delivered landmark judgements. Specific problems existed in India because of its vast size and the fact that a majority of the population who lived in remote rural areas were unaware of competition law. Other developing countries perhaps shared similar problems. For effective application of the Set in such

situations, an extensive educational campaign was required so as to generate awareness among the people with regard to consumer rights and availability of redress mechanisms. The MRTP Commission had issued documentation for guidance of the public and it had also organized training of administrators in the various states. A number of voluntary agencies were also looking into consumer complaints against questionable trade practices harmful to competition. The 1969 Act was progressive in that it had been amended eight times in order to regulate the operation of the economic system, prevent the concentration of economic power and prohibit monopolistic, restrictive and unfair trade practices. The 1991 amendments to the Act removed all pre-entry restrictions on investment decisions of industrial concerns.